IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9792 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ABDULMAJID ABDULSATTAR JUDIA

Appearance:

1. Special Civil Application No. 9792 of 1999

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/12/2003

ORAL JUDGEMENT

By filing this petition, the S.T.Corporation has challenged the award of the Labour Court, Junagadh passed in Reference (L.C.J.) No.68/1991. By the impugned award,

the Labour Court has partly allowed the said reference and the order of removal passed by the S.T.Corporation dated 30th March, 1990 is set aside and the Corporation is directed to reinstate the workman on his original post with continuity of service and with 50% backwages.

2) The respondent-workman was serving as a "conductor" in the S.T.Corporation. A departmental inquiry was conducted against him on the ground that he was remaining absent unauthorisedly. According to the Corporation, the respondent-workman remained absent from duty without prior permission from 28-1-1989 to 11-4-1989. After the completion of inquiry, he was removed from service, which resulted into aforesaid industrial dispute.

3) It is pointed out that the past record of the concerned-workman was also not good and there were 20 acts of misconduct established against him during his service tenure. Mr.Raval appearing for the S.T.Corporation submitted that the workman remained unauthorisedly absent without prior permission and it is not a case in which reinstatement order was required to be passed by the Labour Court. It is submitted by Mr.Raval that since the respondent was transferred from one depot to another depot and as he was not willing to go to the transferred place, he did not report for duty at the relevant time. It is submitted that in view of the said misconduct, reinstatement order is required to be set aside. Mr.Raval has relied upon the decision of this Court in the case of Maganbhai L.Chauhan Vs. Divisional Controller, G.S.R.T.C. reported in 1999 (1) GLH 527, wherein this Court has held that "if a person has remained unauthorisedly absent, the dismissal is the proper remedy."

4) Mr.Rathod, on the other hand, submitted that the workman has produced medical certificate for remaining unauthorisedly absent, as he was suffering from heart trouble and this was a justifiable reason for remaining absent. It is submitted that, in any case, the Labour Court has invoked the provisions of Section 11-A of the Industrial Disputes Act and since the penalty was disproportionate, reinstatement order was passed. He submitted that, therefore, the order of the Labour Court is not required to be interfered with. It is pointed out by both the sides that, during the pendency of this petition, the workman has retired on attaining the age of superannuation on 30th April, 1997, and the S.T.Corporation has allowed him to retire. Unfortunately, it seems that the said fact was not

brought to the notice of the Labour Court. However, as the respondent has already retired, there is no question of reinstating him in service. As far as payment of backwages is concerned, Mr.Rathod has submitted that at least the concerned workman may be awarded Rs.25,000/-- for the intervening period.

5) After hearing both the sides and after considering the reasoning of the Labour Court and considering the fact that the Corporation has allowed the concerned workman to retire on attaining the age of superannuation, as he reached the age of superannuation on 30th April 1997, there is no need to pass the order of reinstatement. So far as backwages are concerned, the order of the Labour Court is modified and for the intervening period, i.e. from the date of removal till the date of superannuation, the concerned workman shall be entitled to Rs.15,000/-, as backwages. It is clarified that the concerned workman shall be entitled to all other retiral dues, as well as periodical increments as if he was continuously serving till the date of his superannuation, i.e. upto 30th April, 1997. The S.T.Corporation is directed to calculate such retiral dues, including Rs.15,000/- as backwages, and such amount may be paid to the concerned workman within a period of one month from today.

6) Accordingly, this petition is partly allowed to the aforesaid extent and the order of the Labour Court is modified accordingly. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J.)
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